

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



Docket  
No.

75-1326

To be argued by:  
William J. Dreyer

IN THE  
United States Court of Appeals  
For the Second Circuit

B  
P/S

UNITED STATES OF AMERICA,

*Appellee,*

— against —

GILBERT WARREN JUSTIN,

*Appellant.*

Appeal from the United States District Court for the  
Northern District of New York

BRIEF FOR APPELLEE

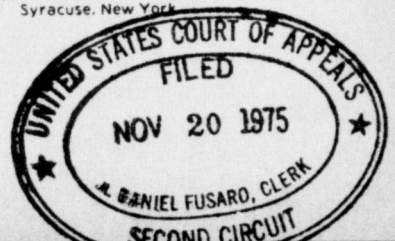
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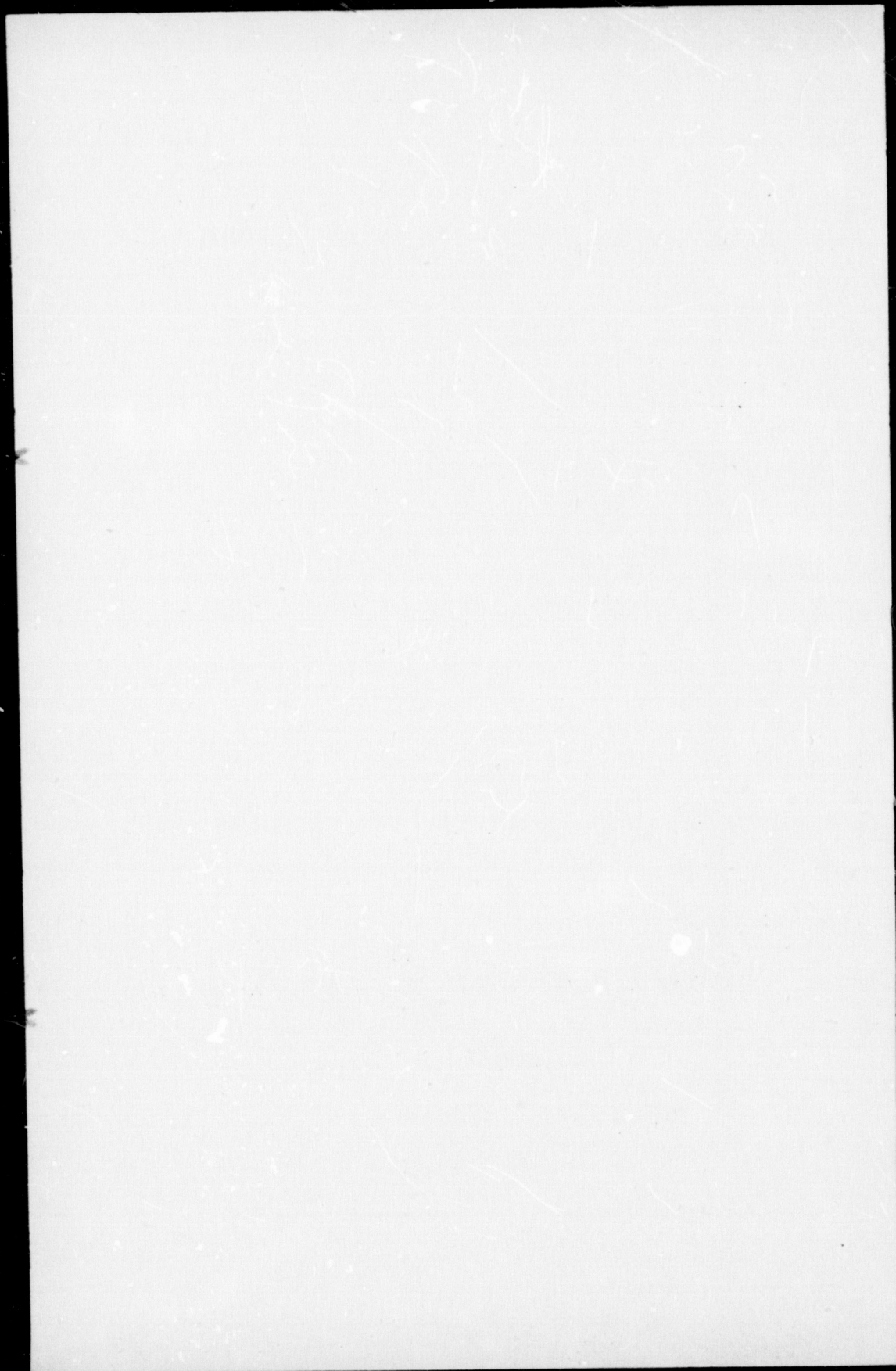
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**IN THE  
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For the Second Circuit**

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UNITED STATES OF AMERICA,

*Appellee,*

— against —

GILBERT WARREN JUSTIN,

*Appellant.*

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Appeal from the United States District Court for the  
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**BRIEF FOR APPELLEE**

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**ISSUES PRESENTED**

1. Whether the investigative stop of appellant's automobile by a Border Patrol agent and the subsequent search of that automobile were in violation of the Fourth Amendment.
2. Whether the evidence of record is sufficient to withstand appellant's trial motions for judgment of acquittal.
3. Whether the prosecuting attorney's closing argument concerning the credibility of witnesses constituted prejudicial error.
4. Whether the Court's instructions concerning the credibility of witnesses <sup>were</sup> ~~was~~ so lengthy as to constitute plain error.

## STATEMENT OF THE CASE

### Nature of Case and Course of Proceedings

The Appellant, Gilbert Warren Justin, was charged in a one-count Indictment with smuggling jewelry into the United States from Canada in violation of Title 18, United States Code, Section 545. Following the Court's denial of the Appellant's motion to suppress seized evidence, the Appellant was found guilty by a jury and subsequently sentenced by the Court to be imprisoned for a term of three years. The Appellant appeals from the judgment of conviction.

## STATEMENT OF FACTS

The United States Port of Entry at Cannon Corners, New York, is located about three miles south of the United States - Canadian border on a north-south road known as the Cannon Corners Road \*(Tr. 14). 1/ An electronic sensory or intrusion device is located on the same road about one-eighth of a mile south of the international border (Tr. 14). At the time of the incident which gave rise to this criminal case, the Port of Entry closed at four or five o'clock p.m., and signs located at the closed Port directed persons to report to the Port of Entry at Mooers, New York, which is located approximately nine miles east of Cannon Corners (Tr. 16-17). To drive from Cannon Corners to the Port of Entry at Mooers, one must proceed about three miles south of the Cannon Corners Road and then east on Route 11, an east-west route, to Mocers. At the intersection of

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\* "Tr." refers to the transcript of the suppression hearing and trial, and the number following "Tr." refers to typed page numbers of the said record.

1/A map is enclosed in Appendix B to this brief.

Cannon Corners Road and Route 11, which is six miles south of the border, there appears another sign directing persons east towards Mooers for immigration and customs inspections. (Tr. 17).

During the early morning hours of April 8, 1975, Robert A. Coffin, United States Border Patrol Agent, was patrolling Route 11, near Mooers, New York. At about 12:45 a.m., he received a coded signal in his automobile indicating a crossing of the international border on the Cannon Corners Road (Tr. 10, 17). Aware that the Port of Entry was closed and that the Cannon Corners Road was lightly traveled at that time of day, Agent Coffin drove west on Route 11 at about 85 miles per hour in order to determine what had set off the signal. During his trip, he observed no vehicles along Route 11. When he approached the intersection of Cannon Corners Road and Route 11, however, he observed a van-type vehicle about one-quarter mile west of the intersection traveling at about 45 miles per hour (Tr. 19).

Agent Coffin closed the gap between his car and the van and then observed that the van did not have New York State license plates. He pulled the van over and observed an Ontario license plate as he drove his car in behind the van (Tr. 21-22).

Agent Coffin and Appellant, the driver of the van, got out of their vehicles and met near the rear of the van, whereupon Agent Coffin asked Appellant where he was coming from. Appellant said he was coming from "St. Something or other" in Canada (Tr. 23). Agent Coffin asked if he meant St. Chrysostome, and Appellant responded that he did. As Agent Coffin then knew, St. Chrysostome is almost directly north of Cannon Corners; and one can proceed from St. Chrysostome into the United States on the Cannon Corners Road (Tr. 24). Agent Coffin then asked Appellant if he reported to Customs and Immigration, and Appellant responded that he reported back east on Route 11 and pointed with

his finger in an easterly direction (Tr. 25). Agent Coffin asked him if he meant the Town of Mooers, and Appellant said that he thought that was it and that he reported about four hours ago. Asked about his citizenship and identity, the Appellant responded that he was a United States citizen and produced an expired California driver's license showing him to be Gilbert Justin. Agent Coffin then directed a flashlight in the back of the van and observed a rug and several cardboard cartons. Believing that an alien might be hiding under the rug (Tr. 26), Agent Coffin asked Appellant for permission to look under the rug. When he received Appellant's permission, Agent Coffin looked in the van and found no persons. He observed, however, the cartons and several pieces of jewelry displayed on cardboard backings. He then asked Appellant if he made a declaration at customs of the goods in the van, and Appellant responded that he told customs about the goods but was allowed to pass through without an exchange of receipts, documents, or other forms (Tr. 26-27).

After another Patrol Agent, Michael Habib, arrived at the scene as a back-up, Agent Coffin produced a map from his own car and asked Appellant to show him where he entered the United States. Appellant pointed to Route 22, which is the road leading to Mooers from Canada and which intersects with Route 11 at a point just south of Mooers (Tr. 27-28).

Shortly thereafter, Agent Coffin called in to his section headquarters and requested an "NCIC check" (National Crime Information Center) for the Appellant. Upon being advised that there was an outstanding warrant for Appellant's arrest, Agent Coffin handcuffed Appellant and radioed the State Police for assistance. At that time, Coffin considered turning the Appellant over to local authorities (Tr. 31). While waiting for the State Police to arrive, Agent Coffin stated to Appellant that it was strange that he could get through a port

of entry without a similar NCIC check being made. He there asked Appellant if he really went through the port, whereupon Appellant admitted that he came down the Cannon Corners Road (Tr. 32).

After the State Police arrived at the scene at about 2:10 a.m., Appellant called to Agent Coffin and requested the names of the officers and agents present because he had about \$6,000. worth of valuables in a brown bag in the front of the van. Agent Coffin recovered the bag and observed its contents and placed the bag in his car so that Appellant could see it (Tr. 35). As a result of earlier radio transmissions by Agent Coffin, Customs Agents Spooner and Bennett arrived at the scene and, upon being told by Coffin of the chain of events, decided to take Appellant to their headquarters at Champlain where the van's contents would be inventoried (Tr. 37).

At the Port of Entry at Champlain, Agents Spooner and Bennett conducted a search of the van and an inventory of the cartons and brown bag observed in the van. While searching the front of the van, Agent Spooner found a road map containing penned-in lines on the international border routes, including the Cannon Corners Road (Tr. 60).

The jewelry and the road map were introduced in evidence during the trial before the jury. Agents Coffin and Spooner substantially repeated their suppression hearing testimony before the jury. Agent Coffin, however, omitted from his trial testimony mention of the NCIC check and Appellant's statements ruled to be inadmissible by the trial judge, including defendant's admission that he came into the United States on the Cannon Corners Road. Additionally, Agent Coffin augmented his testimony concerning identification of the jewelry by describing the commercial nature of the jewelry found (Tr. 113), and noted that the only open port of entry <sup>immediately to the west of Cannon</sup> was at Chateaugay, New York, which is approximately <sup>Corners Road</sup> 15-20 miles west of the said intersection (Tr. 125).

After Spooner's testimony, the United States introduced in evidence a stipulation of testimony of Reid Mosely, employer of Appellant, which stated that Appellant was in Ottawa, Canada, on April 6, 1975, and was to leave Ottawa on April 7, 1975, with the van and its contents to make sales in southern Ontario. It also stated that Mr. Mosely did not mark the map found in the van and that besides Mr. Mosely and Appellant only one other person had driven the van some weeks before April 8, 1975 (Tr. 139-140).

Mr. Darrell Boyea then testified that he was the sole customs inspector on duty at Mooers during the period of time Appellant claimed to have reported. He testified that traffic on the evening of April 7, 1975, was light, and that he could not recall the entry of a green van. He testified that during his shift, no declaration of the jewelry received in evidence was made to him by any person (Tr. 42).

A stipulation of testimony of the customs inspector on duty at Mooers from midnight to 8:00 a.m. on April 8, 1975, was introduced and stated that customs inspector Norton could not recall the entry of a green van on his shift and that no one declared the merchandise introduced in evidence (Tr. 144). A stipulation of testimony of the custodian of the records at customs headquarters in Champlain stated that no entries were made in the records for Appellant at Mooers, New York, during the evening of April 7, or the morning of April 8, 1975. Finally, the United States introduced a stipulation of testimony of a customs appraiser stating that the jewelry had a domestic value in excess of \$4,000.

During the presentation of the defense, Appellant testified that on the morning of April 8, 1975, he was going to Watertown, New York, to sell merchandise. He stated that he came down the Cannon Corners Road but did not see those signs at the closed Port of Entry or at the intersection directing persons to Mooers. He

testified that he intended to report to customs at Chateaugay (Tr. 152) which is approximately 12 miles west of the Cannon Corners - Route 11 intersection, and denied that he had ever been in Mooers, New York. He then denied: (a) that he told Agent Coffin that he reported to immigration and customs (Tr. 163); (b) that Coffin asked him whether he declared the merchandise at a Port of Entry (Tr. 166); (c) that he responded to Coffin that he declared the merchandise (Tr. 172); and (d) that he, the Appellant, pointed to a map produced by Agent Coffin at the scene of the stop and indicated he entered the United States on the road leading to Mooers (Tr. 166).

## ARGUMENT

### POINT I

**NEITHER THE INVESTIGATIVE STOP OF APPELLANT'S FOREIGN VEHICLE BY A BORDER PATROL AGENT WHO POSSESSED ARTICULABLE FACTS THAT THE VEHICLE CROSSED THE INTERNATIONAL BORDER AT A CLOSED PORT OF ENTRY NOR A SUBSEQUENT SEARCH OF THAT VEHICLE BASED ON CONSENT AND PROBABLE CAUSE VIOLATED THE FOURTH AMENDMENT.**

In his appellate brief, the Appellant asserts that the initial stop of his van by a Border Patrol agent was unlawful because the Patrol agent lacked probable cause or a founded suspicion to warrant such an investigatory stop. Second, he asserts that the search of the vehicle, which resulted in the discovery of jewelry and a marked map which were subsequently introduced at trial, flowed directly from the illegal stop, notwithstanding the Court's findings<sup>2/</sup> that: (a) the initial search of the van was based

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<sup>2/</sup> Memorandum Decision, page 7, 9.

on Appellant's consent to search; that (b) the second search which led to the discovery of the brown bag containing jewelry occurred as a result of Appellant's disclosure of the existence of the bag and his request that it be brought to him; and (c) the third search, at customs headquarters, which led to the discovery of the marked map and additional jewelry in cartons, was based on probable cause to believe that a customs violation had occurred.

Although the Border Patrol's statutory authority<sup>3/</sup> for stopping automobiles in the border area without warrants recently has been limited by the United States Supreme Court in Almeida-Sanchez v. United States, 413 U.S. 266 (1973) and United States v. Brignoni-Ponce, 43 L.W. 5028 (1975), the United States submits that in the instant case Agent Coffin's actions on April 8, 1975, conformed to the standards of reasonableness adopted in those cases. In Almeida-Sanchez, the Court held that the Fourth Amendment prohibits warrantless stops and searches of automobiles by border patrol agents looking for aliens at points away from the international border unless the stop is made at a functional equivalent of the border (413 U.S. 266, 273), presumably at a fixed check point, or in the case of a stop by a "roving patrol", is based upon probable cause or a founded suspicion that the car contains aliens or recently crossed the border (413 U.S. 266, 269). In Brignoni-Ponce, supra, the Court, in balancing the interference with individual liberty caused by an investigatory stop against the governmental interest in controlling international borders ruled that

where an officer's observations lead him reasonably to suspect that a particular vehicle may

<sup>3/</sup> Section 287(a)(1)(3), Investigation and Nationality Act, 8 USC 1357(a)(1)(3) (1970); and 8 CFR 100.4, 103.1(i) (1974), are set forth in Appendix B.

contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provide suspicion....

The officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause (43 L.W. 5028, 5031).

While the decision in Brignoni-Ponce is tailored to and grew out of specific circumstances ~~in~~ which may be peculiar to the Mexican-United States border, where illegal entry is unchecked and roving patrols apparently stopped automobiles because of the "Mexican appearance" of their occupants, the principle <sup>ann</sup>~~ann~~ounced by the Court applies with equal weight to other categories of police action and to other border regions where suspicious circumstances may arise in different contexts. The principle, in other words, recognizes that the Fourth Amendment: (a) allows a properly limited "seizure" on facts that do not constitute probable cause to believe that suspects are guilty of a crime, Terry v. Ohio, 392 U.S. 1 (1968); and (b) requires only that an officer making an investigative seizure possess articulable facts which, taken together with rational inferences from those facts, warrant a belief that criminal activity may be taking place. Thus, in Adams v. Williams, 407 U.S. 143 (1972), the United States Supreme Court stated, at 407 U.S. 143, 145-146 that:

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. . . a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo temporarily while obtaining more information, may be most

reasonable in light of the facts known to the officer at the time.

Here, Agent Coffin possessed at least seven "articulable facts" which gave rise to the need for immediate investigation. First, Agent Coffin received a signal from a sensory device, which signal was adequately coded to identify a border crossing on the Cannon Corners Road. Regarding the use of sensors as the sole basis for stopping an automobile in a "sensor surveillance" area, see United States v. Angel Mora-Chavez, 496 F.2d 1181 (9th Cir., 1974). Second, the hour was late and Agent Coffin knew that the port of entry at Cannon Corners was closed. Third, he was aware that traffic on the Cannon Corners Road and Route 11 was generally light at that hour and, in fact, observed no vehicles as he sped west on Route 11. Fourth, as he approached the intersection at Cannon Corners Road and Route 11, he observed Appellant's van approximately one-quarter mile west of the intersection. Fifth, he was aware that a series of signs direct persons entering the United States at the closed port on Cannon Corners Road to Mooers, New York, which is in an easterly direction. Sixth, the van bore out-of-state license plates, which, upon closer examination, proved to be Canadian plates. Seventh, Agent Coffin knew that the distance from the sensor to the intersection was approximately six miles, whereas, the distance from Mooers, New York, to the intersection, which distance Agent Coffin traveled at 85 miles per hour, was approximately nine miles. Under the foregoing circumstances, and unlike the roving patrols of Almeida-Sanchez, supra, Brignoni-Ponce, supra, United States v. Speed, 489 F.2d 480 (5th Cir., 1974), or even United States v. Bugaran-Casas, 484 F.2d 853 (9th Cir., 1973), cert. denied, 414 U.S. 1136 (1974), wherein the perceived facts in the possession of agents included no specific information that the stopped cars recently crossed the border, Agent Coffin had sufficient articulable information to

believe that the vehicle and its passenger recently crossed the border at a closed port of entry and was traveling away from the nearest open port of entry. Accordingly, the stop was reasonable and necessary.

After the stop, Agent Coffin's brief inquiry established that Appellant was an American citizen using an expired driver's license and coming from St. Chrysostome, Canada. The record is clear and there is no apparent dispute on appeal that he then sought and received permission to look in the van<sup>4/</sup> for aliens. During his examination, he observed merchandise, and accordingly, directed his inquiry to the Appellant's reporting to a Customs and Immigration station.

Appellant claims<sup>5/</sup> that when Agent Coffin found no aliens, his right to search ceased and goods recovered thereafter were illegally obtained. The United States asserts, however, that due to the suspicious circumstances of the border crossing, Agent Coffin's initial observation of the merchandise gave him sufficient cause to broaden his inquiry. In United States v. Barbera, 514 F.2d 294 (1975), the Court of Appeals for this Circuit stated at page 296 that the

dual purpose of the border search (and therefore the stop) is to ascertain whether an illegal alien is seeking to cross the border or whether contraband or dutiable property is being smuggled.

Having seen the merchandise in the van, Agent Coffin, by questioning Appellant and using his own map, elicited Appellant's claims that he reported for Customs and Immigration at Mooers, about four hours before, that he told the inspector about the goods in the van, that he

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<sup>4/</sup> Memorandum Decision, p. 7.

<sup>5/</sup> Appellant's Brief, p. 7.

was allowed through without further examination, and that he received no documents or receipts for his merchandise. Finally, Agent Coffin determined that Appellant was wanted on an outstanding arrest warrant and expressed to Appellant his disbelief that Appellant could have come through a port of entry without a similar check. Shortly thereafter, he observed the brown bag of jewelry when Appellant advised him of its location.

Based on the foregoing, it is clear that the search of the van which led to the discovery of evidence used at trial was not based solely on the "articulable facts" justifying the initial stop, as suggested by Appellant<sup>6/</sup>, but rather on the consent given by Appellant and the probable cause developed as a result of the stop.

## POINT II

THE EVIDENCE OF RECORD, INCLUDING THAT OFFERED BY THE DEFENDANT, IS SUFFICIENT TO WITHSTAND DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL.

In his brief (Point II), Appellant contends that the Trial Court erred in submitting to the jury the question of whether Appellant knowingly and willfully and with intent to defraud the United States clandestinely introduced or smuggled jewelry into the United States. Issues of deception and credibility aside, Appellant appears to suggest<sup>7/</sup> that a person who intends to smuggle must be permitted to wait until he passes the location of or can find an open customs house before he completes his offense. This notion was rejected in United States v. Ritterman, 273 U.S. 261, 267 (1927).

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<sup>6/</sup> Appellant's Brief, p. 6.

<sup>7/</sup> Appellate Brief, page 9; Tr. 221-222

The term "clandestinely introduce" which is synonymous with the word "smuggling", refers to any acts or methods of a defendant in surreptitiously and by concealment or fraud avoiding customs and introducing goods into the United States. United States v. Claybourn, 180 F.Supp. 488 (D.C. Cal., 1960); United States v. Kurfess, 426 F.2d 1017 (5th Cir., 1970), cert. denied, 91 S.Ct.

60. Proof tending to show (1) that the Appellant was in *Ottawa* Canada on April 6, 1975, and was to leave for Southern Ontario with his employer's van and goods on the next day; (2) that he came into the United States during early morning hours on a road on which is located a closed port of entry; (3) that Appellant traveled west after coming down on the road; (4) that at least two signs on that road direct persons entering after hours to Mooers, New York, for inspection; (5) that Appellant told a patrol agent that he reported to Customs in Mooers, New York, four hours before he was stopped and declared the merchandise but possessed or received no forms or other documents; (6) that Appellant did not so enter and declare that merchandise; (7) that he possessed a road map with previously marked border crossings, including the Cannon Corners Road; (8) and that the value of the merchandise was not minimal, was sufficient to warrant a determination by the trial judge that upon the evidence,

giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. United States v. Taylor, 464 F.2d 240 (2nd Cir., 1972).

## POINT III

## THE PROSECUTING ATTORNEY'S CLOSING ARGUMENT CONCERNING THE CREDIBILITY OF WITNESSES WAS PROPER.

Referring to Appellant's trial testimony<sup>8/</sup> that he neither made certain statements to Agent Coffin nor pointed to Mooers, New York, on a map, government counsel argued:

Well essentially those claims bring to the foreground the credibility of the witnesses. You heard it all. All I can say about that is Mr. Coffin is here (sic) in this courtroom, you observed his demeanor, you observed him when he testified, and most important you observed him during the cross-examination by Mr. Hatch. (Tr. 193)

He (Appellant) claims Mr. Coffin made four or five willful misrepresentations to you about what ---

Mr. Hatch: I object to that line, that is not the claim.

The Court: It will be the jury's recollection of the testimony that controls.

Mr. Dreyer: My question to you is this, you heard the witness, why did he do that, and what do you know about Mr. Coffin, what is his interest in this case, what is his interest in the outcome of this case. . . Ask yourselves the important question, why would he make misrepresentations about what was stated, and ask

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<sup>8/</sup>Tr. 171, cross-examination of Appellant, lines 13-19; Tr. 172, lines 1-15.

yourselves did Mr. Hatch show on cross-examination the workings of a devious police officer . . . did he establish anything to enable you to say . . .

Mr. Hatch: I object to that, to those characterizations.

The Court: Please don't characterize the testimony. It will be the jury's recollection of the evidence that controls here. If counsel's recollection of it differ from yours, you are bound by oath to reject what he says and rely on your own memory.

At page 195<sup>9/</sup>, Trial Transcript, counsel continued:

Which brings us to Mr. Justin. By being a defendant he should not be presumed to be non-credible. That's absolutely the case, but in this case he has set up certain statements which totally contradict another witness who testified before you therefore in this case when those contradictions are so great, really match his interest in this case against the interest of that witness Agent Coffin and then determine the credibility of the two parties.

While Appellant's counsel chose to ignore in his closing argument the conflict between the testimony of Appellant and that of Agent Coffin, there is ample support in the record for government counsel's comments to the jury concerning the credibility of witnesses. Confer United States v. DeAngelis, 490 F.2d 1004 (2d.

<sup>9/</sup> Tr. page 195 is set forth in Appendix B. At the request of the Government, the court reporter reviewed the argument appearing on page 195 and corrected two typing errors. These changes were provided to counsel for appellant on November 12, 1975.

Cir. 1974). Moreover, while it would have been permissible for counsel to urge the jury to find that Appellant's testimony was fabricated, United States v. Gottlieb, 493 F.2d 987, (2d. Cir., 1974) government counsel clearly omitted from his argument the drawing of any such conclusion, and left to the jury the determination of whose testimony was to be believed.

Finally, Appellant relies on the case of United States v. Martinez, 487 F.2d 973 (10th Cir., 1973) for the proposition that it is improper for government counsel to "bolster the credibility" of a witness. The decision, in fact, opines that it is improper for prosecuting attorneys

in an effort to bolster the credibility of a government witness to place their own integrity, directly or indirectly, on the scales. 487 F.2d 973, 977.

The record is devoid of any comment by government counsel indicating a personal belief in the veracity of a government witness.

#### POINT IV

**THE COURT'S INSTRUCTIONS CONCERNING THE CREDIBILITY OF WITNESSES WERE PROPER AND ARE NOT PROPERLY ASSIGNED AS ERROR ON APPEAL.**

In his appellate brief, Point V, Appellant contends that the Court's instructions concerning credibility were so lengthy as to imply that the issues in the trial were reduced to a contest as to who was telling the truth, and that this alleged defect constituted plain error.

First, the claim, which the government contends is frivolous, is neither borne out by a review of those

instructions<sup>10/</sup> in the overall context in which they were given, nor by the case of United States v. Blue, 430 F.2d 1287 (5th Cir. 1970), cited by Appellant as authority for his proposition.

Second, after the Court's instructions were completed, Appellant took no exception to any portion thereof. Accordingly, Appellant may not now assign as error any portion of the charge. Rule 30, Federal Rules of Criminal Procedure.

### CONCLUSION

For the foregoing reasons, the Memorandum-Decision and Order of the District Court, relating to Appellant's motion for suppression of evidence, and the Judgment of Conviction appealed from should be affirmed.

Respectfully submitted,

JAMES M. SULLIVAN, JR.  
United States Attorney

BY:

William J. Dreyer  
Assistant U. S. Attorney

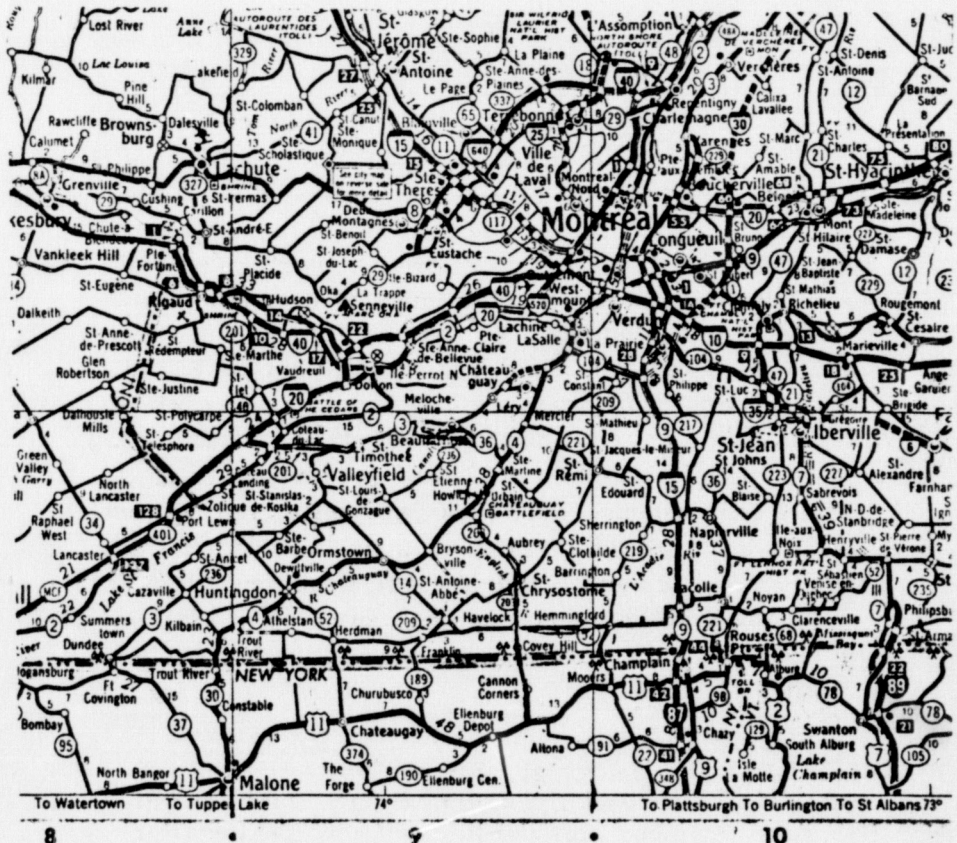
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<sup>10/</sup> The Court's instructions appear at Tr. 200-218; the instruction on credibility appears at Tr. 204-206.

## APPENDIX B

## APPENDIX B

The map enclosed herein, is a reproduction of a portion of Government Exhibit 3, and shows the border area in and around Moores and Cannon Corners, New York, and St. Chrysostome, Canada.



## APPENDIX B

Title 8, U.S.C. Section 1357:

POWERS OF IMMIGRATION OFFICERS AND  
EMPLOYEES—POWERS WITHOUT WARRANT

(a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States:

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States; and . . .

Title 8, C.F.R. Section 103.1:

DELEGATION OF AUTHORITY

Without divesting the Commissioner of any of the powers, privileges, and duties delegated to him by the Attorney General under the immigration and naturalization laws of the United States, co-extensive authority is hereby delegated to the following described officers of the Service: . . .

(1) Immigration officer. Any immigration inspector, immigration examiner, border patrol agent, airplane pilot, deportation officer, detention guard, investigator, general attorney (nationality), trial attorney (immigration) or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act, or this chapter.

## APPENDIX B

A reproduction of page 195. Transcript. corrected and initialed by Martin L. Miller, Official Reporter. is set forth herein:

195

1 the evidence that controls here. If counsel's  
2 recollection of it differs from yours, you are  
3 bound by your oath to reject what he says and rely  
4 on your own memory.

5 MR. DREYER: That's correct, establish in your  
6 own mind what you heard Mr. Coffin testify to and  
7 ask yourselves is he credible.

8 Now the Government submits that when you examine  
9 Mr. coffin's testimony you will come to the second  
10 important issue in this case, the conflict of  
11 testimony and what conclusions could flow therefrom.  
12 We submit that when you examine the conflict in testi-  
13 mony you will find that the critical factual dispute  
14 between Mr. Justin and Mr. Coffin aren't insusceptible

15 to different conclusions. Mr. Justin told you he  
16 didn't intend to do any of the things, he didn't  
17 make any of these statements to Mr. Coffin, essen-  
18 tially his claim he was an innocent traveller on his

19 way to Chateaugay. Which brings us to Mr. Justin.  
20 By being a defendant he should <sup>not</sup> be presumed to be  
21 non-credible. That is absolutely <sup>not</sup> the case, but  
22 in this case he has set up certain statements which

23 totally contradict another witness who testified  
24 before you, therefore in this case when those contra-  
25 dictions are so great, really match his interest in

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## Spaulding Law Printing

Re: **UNITED STATES OF AMERICA v. GILBERT WARREN JUSTIN**  
**Docket No. 75-1326**

State of New York )  
County of Onondaga) ss.:  
City of Syracuse )

**EVERETT J. REA,**

Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **JAMES M. SULLIVAN, JR., United States Attorney for Northern District of New York,**

Attorney ~~is~~ for **Appellee,**

☒ he personally served three (3) copies of the printed ☐ Record ☒ Brief ☐ Appendix  
of the above entitled case addressed to:

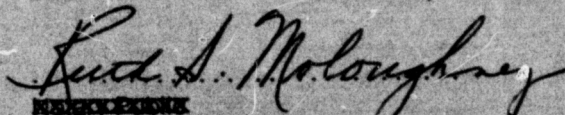
**LIVINGSTON HATCH, ESQ.**  
**Attorney at Law**  
**Front St.**  
**Keeseville, N. Y. 12944**

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York.

☐ By hand delivery

  
Everett J. Rea

Sworn to before me this **19th** day of **November, 1975.**

  
**Richard A. Moloughney**  
Commissioner of Deeds

cc: **James M. Sullivan, Jr., Esq.**  
**Att: William J. Dreyer, Esq.**